IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 31926 of 2007(A)

OS.179/2005 OF MUNSIF COURT, KUTHUPARAMBA
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PETITIONER:

K.P.RAVEENDRAN,
S/O.PARAMESWARAN NAIR,
KALLECHIRA HOUSE, PERATTA,
KOOTUPUZHA P.O., VAYATHOOR AMSOM DESOM.

BY ADV. SRI.CIBI THOMAS

RESPONDENTS:
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1. NORTH MALABAR GRAMIN BANK, HEAD OFFICE AT KANNUR, BRANCH PERATTA, KOTTUPUZHA P.O. KANNUR DISTRICT, PIN 670 706, REP. BY ITS BRANCH MANAGER.

2. K.P.MURALEEDHARAN, S/O.PARAMESWARAN NAIR, KALLECHIRA HOUSE, PERATTA, KOOTUPUZHA P.O., VAYATHOOR AMSOM DESOM, PIN 670 673.

3. ANTONY, S/O.JOSEPH, POOMARATHIL HOUSE, NARIMADA, KOOTUPUZHA P.O., VAYATHUR AMSOM, PIN: 670 706.

4. PAITHOTTIYIL BABY, S/O.CHANDY, KAKKAYANGAD P.O., KANNUR DISTRICT, PIN 670 673.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.31926 OF 2007

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Dated this the 26th day of October 2007

JUDGMENT

This writ petition is preferred against the order in E.P.No.59/2007 in O.S.No.179 of 2005 whereby an order of arrest is issued against the present petitioner. The suit is one for realisation of the amount and it is seen from the plaint that the prayer is to direct the defendants to pay the amount and in default to recover the entire amount by the sale of the first defendant's right, title and interest over the plaint schedule property. It is the first defendant, who is the borrower and defendants 2 and 3 are only sureties. The first defendant has furnished security before the bank, i.e. to proceed against the property in case of default of payment of the amount. Therefore, under the ordinary circumstance, the correct procedure is to proceed against the property of the first defendant first and after the same if the decree amount is not fully realised, then proceed personally against defendants and their assets. Instead of doing the same, it is done in the reverse manner and therefore the order under challenge requires interference.

Therefore, the issuance of warrant against the present petitioner is set

aside and the court below is directed to consider whether it is necessary to proceed against the property of the first defendant first before resorting to other steps. Since I am disposing of the writ petition in the admission stage itself, the court shall fix a date for hearing, give notice to all concerned and dispose of the matter in accordance with law. Till such a decision is taken, the present petitioner, viz., the 3rd defendant shall not be arrested and send to jail.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-